

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Helen Peterson,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 2:07-cv-555
	:	
Michael J. Astrue,	:	JUDGE FROST
Commissioner of Social Security,	:	MAGISTRATE JUDGE KEMP
	:	
Defendant.	:	

ORDER

This matter is before the Court to consider de novo plaintiff's objections to a Report and Recommendation of the Magistrate Judge recommending that judgment be entered in favor of the defendant Commissioner. For the following reasons, those objections will be overruled and judgment will be entered for the defendant.

Plaintiff argues that the record in this case is too sparse to permit the Commissioner to have found that she can still work at the medium exertional level. She notes that although a reviewing physician so found, that opinion does not constitute substantial evidence. She also claims that, although Dr. Danopoulos, who did examine her, did not restrict her to activities below the medium exertional level, he did find that she had legitimate complaints and limitations, and that his failure to quantify the impact of these limitations underscores the lack of evidence to support the Commissioner's findings.

Contrary to plaintiff's argument, the opinion of a non-examining physician can constitute substantial support for the Commissioner's decision if it is consistent with, or supported by, other evidence of record. See, e.g. Barker v. Shalala, 40 F.3d 789, 795 (6th Cir. 1994) ("Insofar as the ALJ credited Dr.

Weiss' [a non-examining medical expert] findings in concluding that Mr. Barker's mental limitations were not totally disabling, the ALJ had the support of substantial evidence"). Further, the Commissioner was entitled to review Dr. Danopulos' findings to determine if they demonstrated limitations inconsistent with the ability to perform medium work. As the Commissioner's response to the objections points out, Dr. Danopulos made many findings that plaintiff's functioning was normal, and observed that she had only slight restrictions in the range of motion of her lumbar spine and some exercise-induced shortness of breath. The absence of more significant findings, coupled with the opinion of the state agency reviewers concerning plaintiff's residual functional capacity, was sufficient to permit a reasonable person to conclude that plaintiff's limitations were not so severe as to bring into question the evaluation of those reviewers. Further, nothing in the record suggests that by either obtaining another consultative examination, or retaining a medical expert, the Commissioner would have more information about plaintiff's condition or that such information would be more favorable to her claim of disability.

For these reasons, plaintiff's objections to the Report and Recommendation of the Magistrate Judge are OVERRULED, and the Report and Recommendation is ADOPTED. The plaintiff's statement of errors is OVERRULED, the decision of the Commissioner is AFFIRMED, and the Clerk is directed to enter judgment in favor of the defendant.

/s/ Gregory L. Frost  
GREGORY L. FROST  
UNITED STATES DISTRICT JUDGE